Washington Supreme Court Enhances Protection for Policyholders in the Claims Adjustment Process

By: Stephanie Grassia, June 17, 2013

Many insurance policies contain a condition that permits insurers to question a policyholder under oath during the adjustment of a claim. Referred to as an Examination Under Oath, or "EUO" in insurance parlance, these conditions are normally invoked when an insurer is suspicious that the policyholder may have engaged in fraud (such as arson) or if there is a dispute about some other aspect of the claim.

The process is quite formal and is similar to a deposition in civil litigation. An insurer representative, usually a lawyer, questions the policyholder under oath. A stenographer takes down everything that is said verbatim, and a written transcript is prepared. Notably, the process is not optional. If an insured refuses to cooperate with an insurer's reasonable request for an EUO, the insurer ***may*** have a right to deny coverage (see discussion below).

The purpose of an EUO is to elicit information about the facts of a claim and is normally quite invasive. The policyholder will be asked to provide his or her legal name and other names used; date of birth; social security number; marital status and history; the identify of relatives; current and prior addresses; employment history; criminal history; the policyholder's involvement in any other lawsuits; ownership of insured property or business; prior insurance claims history; whether the policyholder is in financial distress; and copies of tax returns and other financial information. Through these types of questions, the insurer attempts to ascertain whether the policyholder may have caused his or her own loss to cover business losses, for example, or whether he or she has inflated the amount of the claim.

The fact that an EUO may require a policyholder to divulge personal information does not mean that the insurer's inquiries are necessarily improper. However, EUOs can and do reach the level of being abusive. To that end, in *Staples v. Allstate Ins. Co*., No. 86413 (Wash. January 24, 2013), the Washington Supreme Court set forth rules to rein in insurance companies' inappropriate use of EUOs:

- An insurer may only demand an EUO if the EUO is "material to the investigation or handling of a claim." In doing so, the Court overruled *Downie v. State Farm Fire & Cas. Co*., 84 Wn. App. 577, 582-83, 929 P.2d 484 (1997), where the Court of Appeals held that insurers have an "absolute right to at least one EUO."
- A policyholder is only required to "substantially comply" with an EUO condition, and an insurer must demonstrate that it was **actually prejudiced** by any breach before it can deny a claim, also overruling *Downie*.

After reviewing the facts of the *Staples* case, the Court held that there were genuine issues of material fact as to whether the EUO was material to Allstate's investigation; whether the policyholder substantially complied with Allstate's requests for an EUO; and whether Allstate was prejudiced by any breach of the EUO clause.

Best Practices Tips:

It goes without saying, but you should never conceal relevant information or exaggerate your claim, as Washington courts have voided claims under these circumstances. If your insurer asks you to submit to an EUO, cooperate to the best of your efforts. If you believe, however, that the information requested is not relevant to your claim, object promptly in writing, explaining why you believe the EUO is unwarranted. Cite to *Staples*. If the insurer threatens to deny the claim or continues to demand an EUO, consult with an experienced insurance coverage lawyer immediately. Also, if you will be participating in an EUO, consider having your attorney present to monitor the process. Examiners are more likely to "behave" if an attorney is present. Finally, although the insurer may refuse to provide it, demand a copy of the written transcript.

About the Author:

Stephanie Grassia is a Principal at Cairncross & Hempelmann and leads the firm's Insurance Coverage practice group. She is also a member of the Litigation group. Her practice is primarily focused on disputes between policyholders and their insurance companies. Prior to obtaining her law degree, she spent 12 years as a property and casualty commercial insurance broker, managing complex accounts for policyholders in the hospitality, construction, transportation, and real estate industries, including Space Needle Corporation, the Seattle Monorail, Bellevue Square Mall, and Stevens Hospital. During that time, she obtained the Chartered Property Casualty Underwriter ("CPCU") professional designation. Stephanie also serves as an expert witness in cases involving insurance industry custom and practice. Stephanie's background in both the legal and brokerage side of the insurance industry give her a unique perspective on the resolution of coverage disputes.

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